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MEMORANDUM

Circular Letter: DHCQ 01-10-420

TO: Administrators, Satellites of Licensed Hospital

FROM: Paul I. Dreyer, Ph.D., Director, Division of Health Care Quality

DATE: October 10, 2001

RE: Final Promulgation of Amendments to Hospital Licensure Regulations 105
CMR 130.000 et seq. Governing the Discontinuance of Essential Health
Services.

At its meeting on April 24, 2001, the Public Health Council voted to approve the promulgation of final amendments to 105 CMR 130.000 the Hospital Licensure Regulations to implement Section 2 of Chapter 141 of the Acts of 2000. The regulations become effective on May 11, 2001. In an effort to keep satellite facilities updated on these changes, the Department of Public Health is enclosing a copy of these amended regulations. The relevant amended sections of these regulations are presented in the attached Exhibit 1 - Essential Services.

Background

Under the law, hospitals that contemplate closing an essential service must provide 90 days advance notice of the closure to the Department, which in turn must hold a public hearing on the proposal, and must determine whether the proposed closure will "significantly reduce access to necessary services." In the event that the Department makes such a determination, the Department must require hospitals to submit a plan for "assuring access to such necessary services following the hospital's closure of the service..." The Department's approach has been to define all licensed hospital services defined in 105 CMR 130.020, with some exceptions as set out in the regulation, as essential health services, so that a hospital notification of the closure of

any of these services would trigger the public hearing process. Because a hospital may operate at different locations under a single license, the proposed regulations include a definition of campus, and provide that the closure of a campus providing an essential service would also trigger the public hearing requirement.

The regulation sets out time frames for public notice and public hearing, and list the factors that the Department should consider in determining whether the discontinued service is necessary for preserving access and health status in the hospital's service area. The regulations also specifies the elements of the plan that a hospital must submit in the event that the Department determines that the discontinued service is necessary for preserving access and health status in the hospital's service area.

If you have any questions about the regulations, please contact Carolina Casares at (617) 753-8134.

Exhibit 1
Essential Services

105 CMR 130.020 Definitions is amended by adding the following new definitions:

Campus One of several premises on the license of a hospital that provides an essential health service.

Essential health service means a campus, or any of the services enumerated in the definition of service in 105 CMR 130.020 that is not included in the Excluded Services List below. "Essential health service" also includes outpatient dental services, outpatient psychiatric and mental health services, and outpatient reproductive health services.

Excluded Services List:

- Skilled nursing facility service
- Intermediate care facility service
- Cardiac catheterization service
- Chronic care service
- Hematopoietic Progenitor/Stem Cell Collection, Processing, and Transplant Service
- Hematopoietic Progenitor/Stem Cell Transplantation Program or Clinical Transplantation Program.

Hospital's service area is the geographic area calculated based upon the Determination of Need standards developed pursuant to 105 CMR 100.540 for purposes of calculating the Acute Care Bed Need for Medical/Surgical Services.

105 CMR 130.122 is amended as follows:

(C) Discontinuance of Service(s) - Nothing in 105 CMR 130.122 shall be construed to authorize a licensee to discontinue any service, as defined in 105 CMR 130.020 to the public entirely or in substantial part except upon notice to the Department as described in 105 CMR 130.122. Notice to the Department shall be given at least ninety (90) days in advance of the planned discontinuance of the service. With respect to the proposed closure of an essential health service, such notice shall at a minimum provide current utilization rates for service(s) being discontinued, describe the anticipated impact of discontinuance on individuals in the hospital's service area, provide the date set for discontinuation, and include the names and addresses of any organized health care coalitions and community groups that are known to the hospital when the notice is issued to the Department. With respect to the proposed closure of an essential health service, the hospital shall also send a copy of the notice that it submits to the Department to each of the health care coalitions and community groups identified by the hospital in its notice to the Department. The Commissioner or his or her designee may waive the ninety (90) day time frame for notifying the Department of a planned discontinuance of a service only in extraordinary circumstances where the Commissioner or his or her designee has determined that such a waiver is necessary to protect the health and safety of patients served by the hospital.

(D) The Commissioner or his or her designee may, in exceptional circumstances, find that a health service not otherwise included in the definition of Essential Health Service at 105 CMR 130.020, is necessary for preserving access and health status of patients in the hospital's service area. If the Commissioner or his or her designee makes such a determination, the Department shall immediately notify the hospital of its decision and inform the hospital that the regulatory procedures and requirements contained in 105 CMR 130.122(C) through (I) are applicable to its proposal for discontinuation of the health service(s) in question.

(E) Except in the circumstances noted in 105 CMR 130.122(E)(1)(a) and (b), if the Department finds that a hospital proposes to discontinue an essential health service, discontinue an essential health service at a campus, or discontinue services entirely at a campus, the Department shall publish a notice of a public hearing in the legal notice section of local newspapers serving residents of the hospital's service area at least

21 days prior to the date of the hearing. The notice shall set forth the name and address of the hospital, briefly describe the proposed modifications in existing services, and indicate the date, time and location of the hearing. The hearing shall take place in the hospital's service area no later than sixty (60) days prior to the proposed discontinuance date set out in the hospital's notice submitted pursuant to 105 CMR 130.122 (C). At the public hearing, the hospital shall describe the services to be closed, plans for alternate access to the service, and shall afford the opportunity for interested parties to present their comments on the hospital's proposal.

- (1) Exceptions: The requirements at 105 CMR 130.122(D)-(I) for a public notice, hearing and subsequent determinations, planning and reporting by the Department and the hospital shall not be applicable when the following circumstances exist:

- (a) When there is no interruption in services to patients because the Department expects to license another applicant that is simultaneously seeking licensure pursuant to M.G.L. Ch.111, Section 51-56, or, in the case of hospice services, licensure pursuant to M.G.L. Ch.111, Section 57D to continue providing the same array of services to the same patients as are currently served by the hospital that is providing a notice of discontinuation pursuant to 105 CMR 130.122(C). To qualify for this exception, the hospital and the applicant who is seeking the Department's licensure approval, must ensure that there is no interruption in the service(s) which are provided to the patients currently served by the hospital at this same site.
 - (b) When a hospital proposes to discontinue services at an existing campus or site in order to continue providing the same service(s), without interruption, to the same patient population at a new site that is located within the same zip code area, or within a five (5) mile radius of the location where service(s) are being discontinued. The new site must have sufficient physical capacity and resources to serve the same patient volume as was previously served by the hospital at the site where service(s) are to be discontinued.

(F) Within fifteen (15) calendar days of the hearing held pursuant to 105 CMR 130.122(E), the Department shall make a determination as to whether the discontinued service is necessary for preserving access and health status in the hospital's service area. In making its determination, the Department shall consider the evidence presented at the Public Hearing, the current utilization of the service, the capacity of alternative delivery sites to provide the service, travel times to alternative service delivery sites, the clinical importance of local access to the service, and any other relevant information available to the Department.

(G) If the Department finds that the discontinued service is necessary for preserving access and health status in the hospital's service area, the hospital shall, within fifteen (15) calendar days of such finding, submit a plan for assuring access to such necessary service(s) following the hospital's closure of the service(s). The plan must include the following elements:

- (1) Information on utilization of the service prior to proposed closure
- (2) Information on the location and service capacity of alternative delivery sites.
- (3) Travel times to alternative service delivery sites.
- (4) An assessment of transportation needs post discontinuance and a plan for meeting those needs.
- (5) A protocol that details mechanisms to maintain continuity of care for current patients of the discontinued service
- (6) A protocol that describes how patients in the hospital's service area will access the services at alternative delivery sites.

(H) The plan submitted to the Department by the hospital pursuant to 105 CMR 130.122(G) shall be reviewed by the Department to determine if the plan assures access to the essential service(s) in question following the hospital's closure of the service(s). The Department shall complete its review of the plan and send the hospital written approval or written comments within ten (10) days of receiving the plan from the hospital. In the event that the essential service is a psychiatric or mental health service, the Department's

review of the plan shall be performed in consultation with the Department of Mental Health. The hospital shall submit a timely response to any comments issued by the Department.

(I) The Department shall monitor implementation of the hospital's plan for preserving access to necessary health care services following closure of the service(s). In addition, within one year of closure of the service(s), the Department shall prepare a post-closure report that evaluates the extent to which access to necessary health care services has been preserved. Whenever possible, the hospital shall collaborate with the Department and assist in the development of the post-closure report by submitting utilization data and other relevant information that is requested by the Department to use in preparing the report.